

ALEX G. TSE (CABN 152348)
United States Attorney

BARBARA J. VALLIERE (DCBN 439353)
Chief, Criminal Division

JEFFREY A. BACKHUS (CABN 200177)
Assistant United States Attorney

150 Almaden Boulevard, Suite 900
San Jose, California 95113
Telephone: (408) 535-5080
FAX: (408) 535-5066
jeffrey.backhus@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MADELINE MORGAN SWEET,

Defendant.

) Case No. CR 17-00330 LHK

) GOVERNMENT'S CAP OPPOSITION AND
) SENTENCING MEMORANDUM

) Sentencing Date: August 22, 2018
) Time: 9:15 a.m.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS	1
III.	CAP is Best Used to Benefit Those Who Are Not Already in Post-Treatment Remission.....	5
IV.	Defendant’s Role in the Offense Should be Considered When Determining CAP Eligibility	6
V.	The Government Recommends a Sentence of 30 Months of Imprisonment.	7
A.	Government’s Guidelines Calculations	8
B.	The Court Should Sentence the Defendant to 30 Months of Imprisonment.	9

TABLE OF AUTHORITIES

Federal Cases

United States v. Carty, 520 F.3d 984 (9th Cir. 2008) 9

Federal Statutes

18 U.S.C. § 3553(a)(1)..... 9

21 U.S.C. § 841(b) 8

Federal Rules

U.S.S.G. § 5C1.2(a)(1)-(4)..... 9

U.S.S.G. § 5C1.2(a)(1)(5)..... 9

Other Authorities

Still Searching for the Tzutzú Flower: Cautions Against Extending the Federal Analogue Act of 1986, 27
U. Fla. J.L. & Pub. Pol'y 111 (2016) 10, 11

1 **I. INTRODUCTION**

2 The instant memorandum addresses the government's position regarding Madeline Sweet's
3 ("defendant") enrollment in the Conviction Alternatives Program ("CAP") as well as the government's
4 sentencing recommendation. As discussed herein, the government opposes the defendant's admission
5 into the CAP program because of her role in this offense and because she is not a "target participants for
6 Diversion/Deferred Sentencing Court" as outlined in the CAP Operating Agreement. If the Court agrees
7 with the government and does not refer the defendant to CAP, then the government recommends a
8 sentence of 30 months of imprisonment, which is the low-end of the Guidelines range calculated by the
9 government. The government respectfully disagrees with the Guidelines range calculated by Probation.

10 **II. FACTS**

11 This case arises out of an investigation initiated by the Monterey County Sheriff's Office
12 (MCSO) who provided information to the Drug Enforcement Administration (DEA) relating to MCSO
13 who are investigating the drug trafficking activities of the defendant.

14 Beginning in September 2016, an undercover police officer ("UC") from the MCSO began
15 investigating the sale of narcotics through a website called Reddit (www.reddit.com). As described
16 below, the defendant has used the Reddit web page and associated user information to sell drugs and
17 communicate with customers. Reddit is a social news aggregation, web content rating, and discussion
18 website. Reddit's registered community members can submit content, such as text posts or direct links.
19 Registered users can then vote submissions up and down to organize the posts and determine their
20 position on the site's pages. The submissions with the most positive votes appear on the front page or
21 the top of the category. Content entries are organized by areas of interest called "subreddits".

22 In the month of November 2016, the UC discovered numerous subreddits whose primary
23 purpose is to facilitate the sales of narcotics. These subreddits are further broken down into individual
24 "threads." While monitoring different California threads, the UC began to realize that users on these
25 narcotics based "subreddits" refer to narcotics dealers as "friends." When a user is involved in the sales
26 of narcotics, they will advertise they are a "friend." When users are seeking an individual to purchase
27 narcotics from they will post they are "looking for a friend." The two parties will then communicate via
28 private messages to confirm the specifics of the narcotics transaction.

1 On March 1, 2017, the UC created an account on www.reddit.com named
2 'throawaythroaway123'. On March 03, 2017, the UC used this account to post a comment in the
3 'California – March' thread of the opiate subreddit stating "831 looking for a friend!!". An account
4 named 'imokoffthat' replied to the comment stating "can help in 831". Moments later, the UC's
5 www.reddit.com account received a private message from the same (imokoffthat) account advertising
6 the sales of Furanyl-Fentanyl, a Schedule I controlled substance, in the Monterey area.

7 The person using the moniker 'imokoffthat' went on to detail how, because of the high potency
8 of Furanyl-Fentanyl, they custom manufacture a nasal-spray applicator to ingest the substance. The user
9 of 'imokoffthat' went on to advise the UC that the user of 'imokoffthat' would tailor the concentration
10 of Furanyl-Fentanyl to the UC's specific tolerance to opiates. Eventually, the UC provided the user of
11 'imokoffthat' with a phone number and the UC requested they send the UC a text message. Shortly
12 thereafter, the UC received a text message on his cell phone from a (831) 917-8524 number. The text
13 message identified the sender as a "Maddie".

14 The UC conducted a records check for that phone number and located a Police Report taken by
15 Monterey Police Department in July of 2016 for a Drug-D.U.I. The police identified the defendant as
16 the suspect in that case.

17 The DEA issued an administrative subpoena to Cellco/Verizon and learned that the subscriber
18 for (831) 917-8524 was Mary Sweet in Pacific Grove, California.

19 The UC continued to text the defendant throughout the evening and eventually the defendant
20 offered to provide the UC with a 10mg-10ml solution of Furanyl-Fentanyl in a 30ml nasal-spray bottle
21 for \$50. The defendant also offered to "throw in" an extra 30mg of Furanyl-Fentanyl powder.

22 The UC and the defendant ultimately agreed to conduct the transaction the following Tuesday, at
23 a location near downtown Pacific Grove. However, due to administrative issues, the UC had to cancel
24 the narcotics purchase. The defendant then began to suspect she was texting a law enforcement officer
25 and asked the UC to "friend" her on Facebook in order to prove the UC was "not a cop." The UC
26 advised the defendant he did not have a Facebook account. The defendant then sent the UC links to
27 numerous social media websites, asking the UC to friend her on any of them. Several of the links
28 contained a picture of a woman later identified as the defendant.

1 The UC advised the defendant that he did not feel comfortable friending her on Social Media
2 since the UC claimed he did not know whether she was an undercover law enforcement officer. The UC
3 then stopped texting the defendant for a short period.

4 On March 9, 2017, the UC texted the defendant again asking if she still had a “bottle,” referring
5 to the nasal spray bottle containing Furanyl-Fentanyl. The defendant advised the UC she did not, since
6 she had sold all of it already. At the end of conversation, the defendant stated she would advise the UC
7 when she would have any fentanyl for sale again.

8 On March 10, 2017, the defendant sent the UC a text message advising she had “ordered more.”
9 On March 13, 2017, the UC texted the defendant inquiring if “anything had changed.” The defendant
10 advised the UC “They haven’t sent me tracking yet” and that “its shipped from the NL.” The UC
11 understood “NL” to mean the Netherlands.

12 On March 22, 2017, the UC texted the defendant asking, “Hey, how’s it going?” the defendant
13 advised the UC the shipment was going through customs in San Francisco.

14 On March 27, 2017, the defendant advised the UC she had received a shipment of Furanyl-
15 Fentanyl. She advised the UC she had “25 people legit blowing up my inbox,” the UC understood that
16 to mean she had numerous people attempting to purchase narcotics from her. The defendant texted the
17 UC a “price sheet.” The “price sheet” listed the following amounts of fentanyl and the corresponding
18 costs:

19 1g = \$150

20 500mg = \$75

21 400mg = \$65

22 300mg = \$55

23 200mg = \$44

24 100mg = \$30

25 The UC replied to the defendant requesting 1 gram of Furanyl-Fentanyl. the defendant advised
26 the UC that would require three bottles, each bottle costing another \$10. The UC asked the defendant if
27 she could just “do” two bottles. The defendant agreed, stating she would package the remaining third in
28 a “stealthy as fuck container.”

1 The defendant and the UC agreed to conduct the narcotics transaction in the parking lot of the
2 Nob Hill store in Pacific Grove (located at 900 Lighthouse Ave, Monterey, CA 93940) on March 29,
3 2017, at 11:00 a.m. The defendant advised the UC that she might send her boyfriend (later identified as
4 Everett Reed (hereafter “Reed”) to conduct the transaction.

5 Once at the parking lot, the UC and surveillance officers observed the defendant exit the
6 passenger side door of a 2000 dark green, Chevrolet Metro, registered to Reed. An individual later
7 identified as Reed had driven the Chevrolet Metro to the meeting location and waited in the vehicle as
8 the defendant met with the UC. Once the defendant got out of the Chevrolet Metro, she walked to the
9 UC’s vehicle, which was parked nearby, and entered the passenger side.

10 The defendant met with the UC in the UC’s vehicle and spoke about the sale and the proper
11 dosage amounts for drug so that the UC would not overdose. The defendant expressed concerns about
12 the UC overdosing which appeared to demonstrate her knowledge of how dangerous the drug was. The
13 defendant then provided the UC with one gram of powdered fentanyl, which included two pre-mixed
14 droppers of solution. Initially, the UC gave the defendant a total of \$180. The defendant then got out of
15 the UC’s vehicle and returned to Reed’s vehicle to see if he had \$10 in change to give back to the UC.
16 Ultimately, the UC allowed the defendant to keep the extra \$10 after Reed was unable to offer change to
17 Madeleine Sweet. Madeleine Sweet and the UC agreed the additional \$10 would count toward a future
18 drug transaction.

19 Subsequent laboratory testing of the fentanyl determined that the substance that the defendant
20 sold to the UC consisted of 53.607 net grams of N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-
21 2carboxamide (furanyl fentanyl), a Schedule I controlled substance. The substance also contained a
22 trace amount of methamphetamine.

23 On April 18, 2017, the UC made contact with the defendant who advised the UC she was
24 expecting another shipment of fentanyl at the “end of the week.”

25 On April 19, 2017, the UC contacted the defendant via text message to her phone. The
26 defendant responded with a text message stating that she was in South Lake Tahoe for a week but
27 wanted to know how many the UC wanted. The UC clarified he was inquiring about fentanyl and the
28 defendant advised “it’s on it’s way!!!” The defendant went on to say that she and her boyfriend (Reed)

1 like to take a break from “opes” (presumably opiates) and that the defendant “just like to maintain my
2 ability to use recreationally and when I feel myself slipping into the maintenance mode of opiate usage
3 (like using every day just not to WD) I like to force myself to take a tolerance break lol”. The defendant
4 then inquired as to how long that “fuf last you? It’s intense ya?” The government believes that the
5 defendant was referring to the previous fentanyl transaction she made with the UC.

6 On April 26, 2017, the UC sent a text message to the defendant on her phone, which stated, “Hey
7 maddie! Just wanted to make sure you haven’t forgotten about me yet lol.” Sweet “nope!!! Sorry still in
8 south lake tahoe! ill hit u up as soon as I’m home.”

9 On May 1, 2017, the UC sent a text message to the defendant on her phone, which stated,
10 “Heyyy. Hope all is well. Was just curious if you had any idea when you’d be back in town?? Just
11 wondering if I should go ahead and try and put in an order myself?”

12 On May 6, 2017, the defendant responded via her phone “sorry for the delay. I should have some
13 by Monday if you still want it”.

14 On May 8, 2017, a registered mail envelope addressed to the defendant was seized by
15 investigators and later opened after a search warrant was obtained. The package contained a white
16 powdery substance consistent with fentanyl. The substance was transferred to the DEA Western
17 Regional Laboratory where test results are pending.

18 On May 9, 2017, surveillance was established in the area of the Pacific Grove, U.S. Post Office
19 in anticipation of the defendant picking up the package of suspected fentanyl. Ultimately, Reed and the
20 defendant arrived at the post office in Reed’s vehicle. Reed entered the Post Office and signed for a
21 faux package labeled and designed similarly to the original package which was seized. The defendant
22 was arrested pursuant to a federal arrest warrant obtained during the investigation and Reed was
23 detained.

24 **III. CAP is Best Used to Benefit Those Who Are Not Already in Post-Treatment Remission**

25 Defendant’s role in the offense should disqualify her from CAP eligibility, as explained infra in
26 Part IV of this Memorandum. To the extent the Court is not persuaded of defendant’s ineligibility, the
27 Court should consider how defendant might benefit from CAP, given that she has already completed a
28 residential treatment program, tested drug-free for almost 15 months, and is currently employed. More

1 importantly, consideration should be given to the CAP-eligible candidate who will not earn a place in
2 CAP because defendant has taken one of the limited spaces in the program.

3 The CAP Operating Agreement makes clear that the “target participants for Diversion/Deferred
4 Sentencing Court are defendants with [certain] risk factors who would benefit from effective
5 intervention to address their risk factors and challenges. The program may include substance abuse and
6 mental health treatment, education and literacy training, and employment and job skills training.” *Ex. 1*
7 *at p. 2, CAP Operating Agreement Attachment B.* In the instant case, defendant has already undergone
8 substance abuse and mental health treatment, is already employed and has both a Bachelor of Arts
9 Degree in political science and French Studies, as well as Juris Doctorate degree. Moreover, defendant
10 has been on this path of improvement since her pretrial release in May of 2017, more than a year ago.
11 As noted in the CAP Operating Agreement, “[o]nce successful behavior has been achieved for at least
12 12 months, empirical data suggests that the change is well-integrated and will be supported.” *Id.*
13 Simply put, it is unclear how defendant would further improve from CAP given her seemingly perfect
14 record of remission over a one-year period.

15 The most important consideration, however, is not how defendant will benefit from CAP, but
16 how defendant’s admission will work to another candidate’s detriment. CAP offers a very limited
17 number of placements and, once full, other deserving defendants who might have benefitted from the
18 program will be turned away. It behooves the Court and the community to reserve CAP placements for
19 those candidates who have not yet begun the path to treatment and who might need the more intense
20 structure of CAP to succeed in their first 12 months of recovery. In this way, CAP’s limited resources
21 will maximize its impact on the greatest number of defendants.

22 **IV. Defendant’s Role in the Offense Should be Considered When Determining CAP Eligibility**

23 Section 3.1 of the CAP FAQs specifically provides that defendants are generally excluded from
24 participation in CAP where the “instant offense involves more than [a] minor role in either large-scale
25 fraud or large-scale narcotics distribution.” *Ex. 2, CAP FAQ Section 3.1.* The government does NOT
26 contend that the defendant was involved in large-scale narcotics distribution or that the defendant is
27 explicitly disqualified from CAP eligibility. However, the government does believe that the Court
28 should consider the defendant’s role in the offense and the fact that she was selling a substance that she

1 knew could lead to overdose and/or death.

2 Here, the defendant was at the center of her Furanyl-Fentanyl distribution business and utilized
3 sophisticated online tools to both market narcotics and to obtain them from overseas suppliers. She
4 defendant also had multiple customers for the narcotics. For example, on March 27, 2017, the defendant
5 told the UC that she had “25 people legit blowing up [her] inbox,” which the UC understood to mean
6 she had numerous people attempting to purchase narcotics from her. The defendant even had a “price
7 sheet,” that she would sent to potential customers. Defendant was not a low-level participant in her
8 scheme.

9 Moreover, the defendant knew how dangerous the narcotics she was selling actually were. When
10 the defendant met with the UC in the UC’s vehicle and spoke about the sale and the proper dosage
11 amounts for drug so that the UC would not overdose. The defendant expressed concerns about the UC
12 overdosing which appeared to demonstrate her knowledge of how dangerous the drug was. Prior to the
13 transaction, when the UC and the defendant were still chatting on Reddit, the defendant detailed how,
14 because of the high potency of Furanyl-Fentanyl, they custom manufacture a nasal-spray applicator to
15 ingest the substance. The defendant went on to advise the UC that the she would tailor the concentration
16 of Furanyl-Fentanyl to the UC’s specific tolerance to opiates. Clearly, the defendant knew of the risks
17 of overdose and/or death, but continued to sell the drug regardless of those risks.

18 For all these reasons, the government respectfully requests that the Court deny defendant’s
19 request for admission to CAP.

20 **V. The Government Recommends a Sentence of 30 Months of Imprisonment.**

21 As the government stated in its objections to the PSR, the government believes that the base
22 offense level should be 24 based on 53.6 grams of Furanyl-Fentanyl. Admittedly, the Furanyl-Fentanyl
23 guidelines are a bit uncertain. In fact, Furanyl-Fentanyl is not mentioned anywhere in 2D1.1, including
24 in the drug equivalency tables. However, fentanyl and fentanyl analogues are mentioned. If we were to
25 utilize the fentanyl guidelines, the base offense level for 53.607 grams of fentanyl is 24 (at least 40
26 grams but less than 160 grams of fentanyl). If we were to use the fentanyl analogue guidelines, the base
27 offense level would be 26 (at least 40 grams but less than 70 grams of a fentanyl analogue).

28 Accordingly, pursuant to USSG §2D1.1, Commentary Note 6, Furanyl Fentanyl must be treated as a

1 controlled substance not specifically referenced in the guidelines. Based on the known information,
2 Fentanyl is the most closely related substance and, as a result, the lower base offense level of 24 would
3 apply.

4 In addition, the government disagrees with Probation's citation to USSG §2D1.1, Commentary
5 Note 5, and corresponding decision to utilize one gram of Furanyl-Fentanyl to determine the Base
6 Offense level. Pursuant to USSG §2D1.1, Note (A), the weight of a controlled substance "refers to the
7 entire weight of any mixture or substance containing a detectable amount of the controlled substance."
8 USSG §2D1.1, Commentary Note 1, states that, "[m]ixture or substance does not include materials that
9 must be separated from the controlled substance before the controlled substance can be used." Here,
10 because of the high potency of Furanyl-Fentanyl, the defendant custom manufactures a nasal-spray
11 applicator containing the Furanyl-Fentanyl and a saline solution. The user then ingests the entire
12 mixture or substance. This is not like the other examples in USSG §2D1.1, Commentary Note 1, such as
13 a cocaine/beeswax statue the impregnated wax is not consumable so you do not use the full
14 mixture/substance weight because it is misleading. Here, the Furanyl-Fentanyl/saline solution was ready
15 to be consumed. Accordingly, the full mixture and substance weight should count. See 21 U.S.C. §
16 841(b); USSG §2D1.1, Note (A).

17 Moreover, utilizing the 53.6-gram weight of the mixture or substance containing Furanyl-
18 Fentanyl (with a trace amount of methamphetamine) does not over represent the seriousness of the
19 offense. Although the defendant only completed one sale to the UC, she claimed to have as many as 25
20 people waiting to buy drugs from her. In addition, when she was arrested, the defendant was in the
21 process of obtaining more Furanyl-Fentanyl to sell to the UC. Accordingly, holding the defendant
22 responsible for only one gram of Fentanyl significantly underrepresents the seriousness of the offense.
23 In addition, while in law school, the defendant worked for the Kings County District Attorney's Office,
24 for the United States Attorney's Office for the Eastern District of New York, and as a judicial intern for
25 a superior court judge Bronx Supreme Court, in New York. With those experiences, the defendant must
26 have known what terrible effects the drugs she was selling could have on people. The defendant knew
27 of the risks of overdose and/or death, but continued to sell Furanyl-Fentanyl regardless of those risks.

28 **A. Government's Guidelines Calculations**

The government calculates defendant's Guidelines range as follows:

- | | | |
|----|---|------------|
| a. | Base Offense Level, U.S.S.G. § 2D1.1(a)(5), (c)(8):
(at least 40 grams but less than 160 grams of fentanyl) | 24 |
| | | |
| b. | Amount of Drugs: | |
| | Fentanyl (mixture or substance) | 53.6 grams |
| | | |
| c. | Safety valve:
(If Probation finds that I meet the requirements of
U.S.S.G. § 5C1.2(a)(1)-(4) and the Government finds
that I have truthfully debriefed with them within the
meaning of § 5C1.2(a)(1)(5).) | -2 |
| | | |
| d. | Acceptance of Responsibility: If Defendant meets the requirements
of U.S.S.G. § 3E1.1, she may be entitled to a three-level reduction
for acceptance of responsibility, provided that she forthrightly
admits her guilt, cooperates with the Court and the Probation
Office in any presentence investigation ordered by the Court,
and continue to manifest an acceptance of responsibility through
and including the time of sentencing. | -3 |
| | | |
| e. | Adjusted Offense Level: | 19 |

Because the defendant has a criminal history category of I, her Guidelines range is 30-37 months.

B. The Court Should Sentence the Defendant to 30 Months of Imprisonment.

Section 3553(a) directs courts to consider a number of factors in determining an appropriate sentence. In this case, these factors indicate that a low-end Guidelines sentence of 30 months is sufficient, but not greater than necessary, to achieve the goals of sentencing. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The key factors are the nature and circumstances of the offense and the history and characteristics of the defendant, 18 U.S.C. § 3553(a)(1), the need to afford adequate deterrence to criminal conduct, *id.* § 3553(a)(2)(B), the need to protect the public from further crimes of the defendant, *id.* § 3553(a)(2)(C), and the need to provide the defendant with needed medical care or other treatment. *Id.* § 3553(a)(2)(D).

The heroin and opioid crisis is a cancer that has grown and metastasized in the body politic of the United States. Heroin, opioids and synthetic opioids such as fentanyl are different from other addictive substances. The principal difference lies in the fact that recreational use is too often deadly. The

questionable level of potency in each dose of heroin frequently causes overdose. *See* Audrey Redford, Still Searching for the Tzutz Flower: Cautions Against Extending the Federal Analogue Act of 1986, 27 U. Fla. J.L. & Pub. Pol'y 111, 119 (2016) (stating some heroin overdoses occur because the varying presence of fentanyl renders users unaware of the drug's true potency). All too often news stories emerge of "bad batches" that cause a deluge of fatal overdoses. *See, e.g.*, Steve Birr, "Bad Batch" of Heroin Sparks Five Overdoses in Four Hours, The Daily Caller News Found (Dec. 28, 2016, 3:08 PM), <http://dailycaller.com/2016/12/28/bad-batch-of-heroin-sparks-five-overdoses-in-four-hours/>; Carolyn Blackburne, "Bad Batch" of Heroin is Causing Record Amount of Overdoses in Washington County, <http://www.your4state.com/news/news/bad-batch-of-heroin-is-causing-record-amount-of-overdoses-in-washington-county> (last visited June 23, 2017). Jeremy Gerner et al., 74 Overdoses in 72 Hours-Laced Heroin May Be to Blame, Chi. Trib. (Oct. 2, 2015, 10:11 PM), <http://www.chicagotribune.com/news/local/breaking/ct-heroin-overdoses-met-20151002-story.html>. Furthermore, users develop a tolerance over time and, as a result, seek out the highest potency possible without regard to the related risk of death. The Centers for Disease Control and Prevention ("CDC") found that between 2012 and 2014, heroin caused the most overdose deaths of any drug. *See* Margaret Warner et al., Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2010-2014, 65 Nat'l Vital Stats. Reps., no. 10, Dec. 20, 2016, at 1, 4, <https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr6510.pdf>.

In addition to heroin, there is a surge in the popularity of fentanyl¹ and other powerful synthetic

¹ Fentanyl is an extremely powerful synthetic opioid. It was originally introduced as an intravenous anesthetic in the 1960s. U.S. Dep't of Justice & Drug Enf't Admin. Diversion Control Div., Fentanyl (2016), http://www.deadiversion.usdoj.gov/drug_chem_info/fentanyl.pdf. Today, those with otherwise untreatable pain, such as terminal cancer patients, use fentanyl for pain management. *Id.* Fentanyl is 100 times more potent than morphine as an analgesic. *Id.*; *see also* David Armstrong, "Truly Terrifying": Chinese Suppliers Flood US and Canada with Deadly Fentanyl, STAT News (Apr. 5, 2016), <https://www.statnews.com/2016/04/05/fentanyl-traced-to-china/>. For opioid dependent individuals, fentanyl can serve as a direct substitute for heroin. U.S. Dep't of Justice & Drug Enf't Admin. Diversion Control Div., *supra*. However, because it is much more potent than heroin, fentanyl is a very dangerous replacement. *Id.* Fentanyl's use results in frequent overdoses, which can cause respiratory depression and death. *Id.* Additionally, because fentanyl can be absorbed through the skin in some forms, fentanyl can be deadly if touched. *Id.*; *see also* FENTANYL: Incapacitating Agent, Ctrs. For Disease Control & Prevention, https://www.cdc.gov/niosh/ersbdb/EmergencyResponseCard_2975_0022.html (last updated May 19, 2017) (detailing necessary skin protection for handling fentanyl).

1 opioids such as Furanyl-Fentanyl. The DEA estimates that “[a]bout two milligrams of fentanyl—about
 2 what comes out with a single jiggle of a salt shaker—is considered lethal.” Lynh Bui & Peter Hermann,
 3 Elephant Tranquilizer is the Latest Lethal Addition to the Heroin Epidemic, Wash. Post (Apr. 26, 2017),
 4 http://wapo.st/2qcJqP1?tid=ss_tw&utm_term=.e179c3d288ca; *see also* DEA Issues Carfentanil Warning
 5 to Police and Public, U.S. Drug Enforcement Admin. (Sept. 22, 2016),
 6 <https://www.dea.gov/divisions/hq/2016/hq092216.shtml> (noting that fentanyl can “be lethal at the 2-
 7 milligram range, depending on route of administration and other factors” and that “[t]he dosage of
 8 fentanyl is a microgram, one millionth of a gram—similar to just a few granules of table salt”). Fentanyl
 9 and synthetic opioids are particularly dangerous because they can be—and often are—mixed with other
 10 drugs without the consumer's knowledge. *See* DEA Issues Carfentanil Warning to Police and Public,
 11 *supra* note 25 (“Fentanyl, a synthetic opiate painkiller, is being mixed with heroin to increase its
 12 potency, but dealers and buyers may not know exactly what they are selling or ingesting. Many users
 13 underestimate the potency of fentanyl.”).² The national overdose death rate from synthetic opioids
 14 increased 72.2% from 2014 to 2015. *See* Synthetic Opioid Data, Ctrs. for Disease Control &
 15 Prevention, <https://www.cdc.gov/drugoverdose/data/fentanyl.html> (select “Synthetic Opioids Data” tab)
 16 (last updated Dec. 16, 2016); *see also* Rose A. Rudd et al., Increases in Drug and Opioid-Involved
 17 Overdose Deaths—United States, 2010-2015, 65 *Morbidity & Mortality Wkly. Rep.* 1445, 1446 (2016).
 18 News reports have linked fentanyl to at least 130 deaths in the Bay Area alone since 2015, based on a
 19 survey of records from nine Bay Area counties. *See* NBC Bay Area, Fentanyl Linked to At Least 130
 20 Bay Area Deaths Since 2015, available at [http://www.nbcbayarea.com/news/local/Unsuspecting-Users-](http://www.nbcbayarea.com/news/local/Unsuspecting-Users-Are-Dying-as-Killer-Drug-Surges-in-Bay-Area-422443823.html)
 21 [Are-Dying-as-Killer-Drug-Surges-in-Bay-Area-422443823.html](http://www.nbcbayarea.com/news/local/Unsuspecting-Users-Are-Dying-as-Killer-Drug-Surges-in-Bay-Area-422443823.html).

22 Other dangerous opioids are being developed in order to meet growing demand. An example is
 23 Furanyl-Fentanyl, the synthetic designer opioid at issue in this case. Not much research has been done
 24

25 touch suspected fentanyl and not to test it in the field. The Justice Dep't, Roll Call Video Warns About
 26 Dangers of Fentanyl Exposure, YouTube (June 7, 2017),
 27 <https://www.youtube.com/watch?v=8MLsrleGLSw>. The DEA made the video in response to an
 incident where two police officers in New Jersey nearly died after accidentally inhaling a whiff of
 fentanyl while bagging it for evidence. *Id.*

28 ² In this case, there were trace amounts of methamphetamine in the substance that the defendant
 sold the UC.

on Furanyl-Fentanyl, because it is not used medically. According to the DEA, it is being sold a “research chemical.” However, the government has spoken to DEA chemists who stated that Furanyl-Fentanyl is very similar in effect and potency to fentanyl. Potency is 50 to 100 times more powerful than morphine and it is dosed in micrograms, not milligrams or grams. Bottom line is that it is very dangerous. In this case, laboratory analysis confirmed that the substance that the defendant sold to the UC consisted of 53.607 net grams of N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2carboxamide (Furanyl-Fentanyl), a Schedule I controlled substance.

As stated above, the defendant knew she was selling Furanyl-Fentanyl, and she knew how dangerous the substance was. The defendant stressed the proper dosage amounts for drug so that the UC would not overdose. The defendant went on to advise the UC that she would tailor the concentration of Furanyl-Fentanyl to the UC’s specific tolerance to opiates. Clearly, the defendant knew of the risks of overdose and/or death, but continued to sell the drug regardless of those risks.

As far as the defendant’s history and characteristics, she had a self-described “really good” childhood and never suffered any abuse or neglect. PSR ¶ 59. By all accounts, the defendant enjoyed an upper-middle class upbringing and was able to graduate from college and law school. PSR ¶ 83. The defendant has suffered from drug and alcohol addiction beginning in her teenage years and continuing until her arrest for the instant offense. PSR ¶¶ 76-81. The defendant had a very unhealthy relationship with her mother, but did have a relationship with her father. PSR ¶¶ 61, 67. The defendant has also been diagnosed with several mental and emotional disorders. PSR ¶¶ 72-75.

The government believes that the aggravating and mitigating factors cancel each other out and that the defendant should be sentenced within the applicable Guidelines range. Accordingly, the government recommends that the Court sentence the defendant to 30 months of imprisonment followed by a five-year term of supervised release with the conditions recommended by probation.

DATED: August 15, 2018

Respectfully submitted,

ALEX G. TSE
United States Attorney

/s/
JEFFREY A. BACKHUS
Assistant United States Attorney